

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN RAY GARRIS,

Petitioner,

v.

SCORE JAIL,

Respondent.

Case No. C15-0974-RSM-MAT

REPORT AND RECOMMENDATION

Petitioner is currently in custody at the SCORE Jail in Des Moines, Washington. He has submitted to this Court for review a petition for writ of habeas corpus under 28 U.S.C. § 2241 together with an application to proceed with this action *in forma pauperis*. He alleges in his petition that the SCORE Jail's policies and procedures which permit entire groups of inmates to be punished for the misconduct of a few inmates, or even a single inmate, are unlawful.

A writ of habeas corpus may issue only upon a finding that a prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). In *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), the Supreme Court explained that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." Here,

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petitioner's assertions do not constitute an attack on the legality of his custody. Instead, petitioner attacks the conditions of his current confinement. Such claims may be brought in a civil rights action under 42 U.S.C. § 1983, but are not cognizable in an action brought under § 2241.¹

Accordingly, this Court recommends that petitioner's application for leave to proceed *in forma pauperis* be denied and that this federal habeas action be dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

DEADLINE FOR OBJECTIONS

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit within **fourteen (14) days** of the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motions calendar for the third Friday after they are filed. Responses to objections may be filed within **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **August 14, 2015**.

DATED this 17th day of July, 2015.



Mary Alice Theiler
United States Magistrate Judge

¹ If petitioner wishes to pursue an action under § 1983, he may acquire the necessary forms from the Clerk of this Court.